

DEC 20 2005

CERTIFIED MAIL: RETURN RECEIPT REQUESTED (7003 0500 0003 0875 8581)

Mr. Bruce Law  
President  
Rio Algom Mining LLC  
P.O. Box 218  
Grants, NM 87020

Re: NPDES Permit No. NM0020532  
Public Notice of Final Permit Decision

Dear Mr. Law:

Enclosed are the following: the public notice of the Agency's final permit decision, a copy of our response to comments, and the final permit. This public notice describes any substantial changes from the draft permit.

Should you have any questions regarding the final permit, please feel free to contact Scott Wilson of the NPDES Permits Branch at the above address or by telephone: 214-665-7511, FAX: 214-665-2191, or EMAIL: wilson.js@epa.gov. Should you have any questions regarding compliance with the conditions of this permit, please contact the Water Enforcement Branch at the above address or by telephone: 214-665-6468.

Sincerely yours,

Original Signed By Miguel I. Flores

Miguel I. Flores  
Director  
Water Quality Protection Division

Enclosures

cc (w/enclosures): New Mexico Environment Department

bcc: wilson (6WQ-P) READING FILE (6WQ-P)

READING FILE (6WQ)

CONCURRENCES ORIG: wilson (6WQ-PP) [12/08/5 (2:05pm)]

OFFICIAL FILE COPY

CODE: 6WQ-PP  
NAME: Lane  
DATE: 12-13-05

6WQ-P  
Hosch  
12/14/05



**NPDES PERMIT NO. NM0022101  
RESPONSE TO COMMENTS**

RECEIVED ON THE SUBJECT DRAFT  
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM(NPDES)  
PERMIT IN ACCORDANCE WITH REGULATIONS LISTED AT 40CFR124.17

APPLICANT: Rio Algom Mining LLC  
Ambrosia Lake Facility  
P.O. Box 218  
Grants, NM 87020

ISSUING OFFICE: U.S. Environmental Protection Agency  
Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733

PREPARED BY: J. Scott Wilson  
Environmental Scientist  
NPDES Permits Branch (6WQ-P)  
Water Quality Protection Division  
Telephone: 214-665-7511  
FAX: 214-665-2191  
E-mail: wilson.js@epa.gov

PERMIT ACTION: Final permit decision and response to comments received on the  
draft reissued NPDES permit publicly noticed on August 27, 2005

DATE PREPARED: December 8, 2005

Unless otherwise stated, citations to 40CFR refer to promulgated regulations listed at Title 40, Code of Federal Regulations, revised as of 7/1/05.

**CHANGES FROM DRAFT PERMIT**

There are minor changes from the draft reissued NPDES permit publicly noticed on August 27, 2005.

- A. The reporting period has been changed from once per quarter to monthly.
- B. The compliance schedule for vanadium has been removed
- C. Typographical errors have been corrected.

**STATE CERTIFICATION**

Marcy Leavitt (NMED) to Miguel I. Flores (EPA) dated September 26, 2005.

The following effluent limitations and/or conditions are included in the final permit in conformance with regulations listed at 40CFR122.44(d)(3):

There were no State conditions of certification.

RESPONSE TO COMMENTSISSUE NUMBER 1

The permittee requested confirmation that the test methods required for analysis are those listed in 40 CFR Part 136 rather than the methods previously listed in the expired permit.

RESPONSE

As requested, the reissued permit ( see Part II.C.5.a) requires the use of EPA approved test methods listed in 40 CFR Part 136.

ISSUE NUMBER 2

Rio Algom commented that the compliance schedule for Vanadium is inappropriate because the outfall has been operated as a zero discharge outfall since 1993.

RESPONSE

The compliance schedule has been removed from the permit as requested.

ISSUE NUMBER 3

The permittee noted that the reporting period has been changed from monthly to quarterly and supported the change. However, the draft permit contains some discrepancies which would require reporting before test results are available.

RESPONSE

The change in the reporting period was made in error. The permit is rated as a major industrial facility and the previous permit's monthly reporting frequency is retained in the final permit. As was required by the previous permit, discharge Monitoring Reports will be due on the 15<sup>th</sup> day of the month following the reporting period.

ISSUE NUMBER 4

NMED noted that EPA produced a Statement of Basis for the proposed permit whereas a Fact Sheet should have been prepared since the facility is rated as a major .

RESPONSE

EPA regrets any confusion created by this error. The document should have been labeled "Fact Sheet" rather than "Statement of Basis" as NMED suggests. It does, however, contain all the pertinent material that the regulations at 40 CFR 124.56 require in a Fact Sheet. Therefore, the error does not affect the conditions included in the permit.

ISSUE NUMBER 5

NMED noted that EPA did not include the Rio Puerco and Rio Grande in the list of downstream waters.

RESPONSE

The Rio Puerco and Rio Grande have been added to the waterbody description in the final permit.

ISSUE NUMBER 6

NMED noted that the water body uses were incorrectly stated in the "Statement of Basis".

RESPONSE

The error is noted in the administrative record.

ISSUE NUMBER 7

NMED stated that the water bodies, to which the facility could drain, are designated as supporting limited aquatic life and secondary contact. Toxicity testing would normally be required for this facility; however, previous testing has shown no toxic effects. Therefore NMED is not requiring further testing at this time.

RESPONSE

EPA agrees. Designated uses of the receiving water are limited aquatic life and secondary contact. The designated uses are noted in the administrative record. As noted by NMED, previous toxicity testing done by the permittee shows that the effluent complies with the limited aquatic life use.

ISSUE NUMBER 8

NMED noted that Part II of the permit only lists a Minimum Quantification Level (MQL) for aluminum. The state suggested that the permit contain MQLs for vanadium, zinc, and cadmium.

RESPONSE

MQLs are included in permits as the compliance benchmark for cases where a limit is set at a concentration too low to reliably quantify. All parameters except selenium are limited to concentrations which are greater than the established MQLs. Therefore, there is no need to list additional MQLs. Accordingly, the list has not been expanded in the final permit.

NMED also noted several typographic errors in the permit. Those errors have been corrected.





Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733

NPDES Permit No. NM0020532

## AUTHORIZATION TO DISCHARGE UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Clean Water Act, as amended,  
(33 U.S.C. 1251 et. seq; the "Act"),

Rio Algom Mining, LLC

P.O. Box 218

Grants, New Mexico 87020

is authorized to discharge from a facility located at the Ambrosia Lake mining area,  
approximately 25 miles north of Grants, McKinley County, New Mexico,

to receiving waters named: an unnamed tributary, which drains to Arroyo del Puerto, thence to  
San Mateo Creek, thence to Rio San Jose, thence to Rio Puerco, thence to the Rio Grande in  
segment 20.6.4.105 of the Rio Grande Basin.

in accordance with this cover page and the effluent limitations, monitoring requirements, and  
other conditions set forth in Parts I [Requirements for NPDES Permits - 5 pages], II [Other  
Conditions - 1 pages], and III [Standard Conditions for NPDES Permits - 7 pages] hereof.

This permit supersedes and replaces NPDES Permit No. NM0020532 issued January 28, 2000.

This permit shall become effective on February 1, 2006

This permit and the authorization to discharge shall expire at midnight, January 31, 2011

Issued on December 20, 2005

Prepared by

Miguel I. Flores

Director

Water Quality Protection Division (6WQ)

J. Scott Wilson

Environmental Scientist

NPDES Permits Branch (6WQ-P)

PART I - REQUIREMENTS FOR NPDES PERMITSA. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTSOUTFALL 001

Discharge Type: Intermittent

Latitude 35° 22' 35" N, Longitude 107° 48' 21" W

During the period beginning the effective date of the permit and lasting through the expiration date of the permit (unless otherwise noted),

the permittee is authorized to discharge mine drainage, surface and ground water reclamation waste water, and storm water to an unnamed ditch, which drains to Arroyo del Puerto, thence to San Mateo Creek, thence to Rio San Jose in segment 20.6.4.105 of the Rio Grande Basin. .

Such discharges shall be limited and monitored by the permittee as specified below:

<u>pH RANGE</u>		
<u>PARAMETERS/STORET</u>	<u>DISCHARGE LIMITATIONS/REPORTING REQUIREMENTS</u>	
	<u>QUALITY (UNITS AS STATED)</u>	
	<u>MINIMUM</u>	<u>MAXIMUM</u>
pH (Standard Units)	6.0	9.0
STORET: 00400		

<u>PARAMETERS/STORET CODES</u>	<u>MONITORING REQUIREMENTS</u>	
	<u>FREQUENCY OF</u>	<u>SAMPLE</u>
	<u>ANALYSIS</u>	<u>TYPE</u>
pH (Standard Units)	1/week (*3)	Grab
STORET: 00400		

<u>CHEMICAL/PHYSICAL/BIOCHEMICAL</u>				
<u>PARAMETERS/STORET</u>	<u>DISCHARGE LIMITATIONS/REPORTING REQUIREMENTS</u>			
	<u>QUANTITY/LOADING</u>		<u>QUALITY/CONCENTRATION</u>	
	<u>(LBS/DAY UNLESS STATED)</u>		<u>(mg/L UNLESS STATED)</u>	
	<u>Monthly</u>	<u>Daily</u>	<u>Monthly</u>	<u>Daily</u>
	<u>Average</u>	<u>Maximum</u>	<u>Average</u>	<u>Maximum</u>
Flow (MGD)	Report	Report	****	****
STORET: 50050				
Total Suspended Solids	N/A	N/A	20	30
STORET: 00530				
Chemical Oxygen Demand	N/A	N/A	100	125



STORET: 00340				
Gross Alpha	N/A	N/A	10 pCi/L	15 pCi/L
STORET: 01501				
Dissolved Radium 226	N/A	N/A	3 pCi/L	10 pCi/L
STORET: 09503				
Total Radium 226	N/A	N/A	10 pCi/L	30 pCi/L
STORET: 09501				
Total Uranium	N/A	N/A	2	4
STORET: 22706				
Total Zinc	N/A	N/A	0.5	1.0
STORET: 01092				
Total Cadmium	N/A	N/A	6.7 ug/l	10 ug/l
STORET: 01027				
Total Selenium	N/A	N/A	3.3 ug/L	5 ug/L
STORET: 01147				
Total Vanadium	N/A	N/A	66 ug/l	100 ug/l
STORET: 01087				

PARAMETERS/STORET CODESMONITORING REQUIREMENTS

	<u>FREQUENCY OF ANALYSIS</u>	<u>SAMPLE TYPE</u>
Flow	Continuous	Record
STORET: 50050		
Total Suspended Solids	1/Week (*3)	24-Hr. Composite
STORET: 00530		
Chemical Oxygen Demand	1/Week (*3)	24-Hr. Composite
STORET: 00340		
Gross Alpha (pCi/L)	1/Week (*3)	24-Hr. Composite
STORET: 01501		
Dissolved Radium 226 (pCi/L)	1/Week (*3)	24-Hr. Composite
STORET: 09503		
Total Radium 226 (pCi/L)	1/Week (*3)	24-Hr. Composite
STORET: 09501		
Total Uranium	1/Week (*3)	24-Hr. Composite
STORET: 22706		
Total Zinc	1/Week (*3)	24-Hr. Composite
STORET: 01092		
Total Cadmium	1/Week (*3)	24-Hr. Composite
STORET: 01027		
Total Selenium	1/Week (*3)	24-Hr. Composite
STORET: 01147		
Total Vanadium	1/Week (*3)	24-Hr. Composite
STORET: 01087		

FLOATING SOLIDS OR VISIBLE FOAM

There shall be no discharge of floating solids or visible foam in other than trace amounts.

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SAMPLING LOCATION(S) AND OTHER REQUIREMENTS

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SAMPLING LOCATION(S)

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s): at Outfall 001 prior to discharge.

DEFINITIONS

The term "runoff" shall mean the flow of storm water resulting from precipitation or snow/ice melt coming into contact with the industrial facility property.

The term "uncontaminated runoff" shall mean runoff which does not come into contact (other than incidental) with any raw material, intermediate product, finished product, by-product, or waste product located on the industrial facility property.

NO DISCHARGE REPORTING

If there is no discharge event at this outfall during the sampling month, place an "X" in the NO DISCHARGE box located in the upper right corner of the preprinted Discharge Monitoring Report.

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FOOTNOTES

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- 1\* Requirements for this parameter are effective during the period beginning the effective date of the permit and lasting through one (1) day prior to three (3) years from the effective date of the permit.
- 2\* Requirements for this parameter are effective during the period beginning three (3) years from the effective date of the permit and lasting through the expiration date of the permit.
- \*3 When Discharging.

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTSINTERNAL OUTFALL 001A

Discharge Type: Intermittent

Latitude 35° 22' 35" N, Longitude 107° 48' 21" W

During the period beginning the effective date of the permit and lasting through the expiration date of the permit (unless otherwise noted),

the permittee is authorized to discharge mine drainage, surface and ground water reclamation waste water, and storm water to Outfall 001.

Such discharges shall be limited and monitored by the permittee as specified below:

CHEMICAL/PHYSICAL/BIOCHEMICAL

<u>PARAMETERS/STORET</u>	<u>DISCHARGE LIMITATIONS/REPORTING REQUIREMENTS</u>			
	<u>QUANTITY/LOADING</u>		<u>QUALITY/CONCENTRATION</u>	
	<u>(LBS/DAY UNLESS STATED)</u>		<u>(mg/L UNLESS STATED)</u>	
	<u>Monthly</u>	<u>Daily</u>	<u>Monthly</u>	<u>Daily</u>
	<u>Average</u>	<u>Maximum</u>	<u>Average</u>	<u>Maximum</u>
Chemical Oxygen Demand STORET: 00340	N/A	N/A	Report	Report
Dissolved Radium 226 (pCi/L) STORET: 09503	N/A	N/A	Report	Report
Total Radium 226 (pCi/L) STORET: 09501	N/A	N/A	Report	Report
Total Uranium STORET: 22706	N/A	N/A	Report	Report
Total Zinc STORET: 01092	N/A	N/A	Report	Report

<u>PARAMETERS/STORET CODES</u>	<u>MONITORING REQUIREMENTS</u>	
	<u>FREQUENCY OF</u>	<u>SAMPLE</u>
	<u>ANALYSIS</u>	<u>TYPE</u>
Chemical Oxygen Demand STORET: 00340	1/Month (*1)	Grab
Dissolved Radium 226 (pCi/L) STORET: 09503	1/Month (*1)	Grab
Total Radium 226 (pCi/L) STORET: 09501	1/Month (*1)	Grab
Total Uranium STORET: 22706	1/Month (*1)	Grab
Total Zinc	1/Month (*1)	Grab

STORET: 01092

FLOATING SOLIDS OR VISIBLE FOAM

There shall be no discharge of floating solids or visible foam in other than trace amounts.

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SAMPLING LOCATION(S) AND OTHER REQUIREMENTS

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SAMPLING LOCATION(S)

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s): Internal Outfall 001A at the discharge from the Barium Chloride treatment unit.

NO DISCHARGE REPORTING

If there is no discharge event at this outfall during the sampling month, place an "X" in the NO DISCHARGE box located in the upper right corner of the preprinted Discharge Monitoring Report.

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FOOTNOTES

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\*1When Discharging.

B. SCHEDULE OF COMPLIANCE

None

C. REPORTING OF MONITORING RESULTS (MAJOR DISCHARGERS)

Monitoring information shall be on Discharge Monitoring Report Form(s) EPA 3320-1 as specified in Part III.D.4 of this permit and shall be submitted monthly.

1. Reporting periods shall end on the last day of the month.
2. The permittee is required to submit regular monthly reports as described above postmarked no later than the following day of the month following each reporting period.

STATE  
New Mexico Permits

DAY  
15th

PART II - OTHER CONDITIONSA. MINIMUM QUANTIFICATION LEVEL (MQL)

If any individual analytical test result is less than the minimum quantification level listed below, a value of zero (0) may be used for that individual result for the Discharge Monitoring Report (DMR) calculations and reporting requirements.

<u>Parameters</u>	<u>MQL</u>
Selenium	5 ug/l

The permittee may develop an effluent specific method detection limit (MDL) in accordance with Appendix B to 40 CFR Part 136. For any pollutant for which the permittee determines an effluent specific MDL, the permittee shall send to the EPA Region 6 NPDES Permits Branch (6WQ-P) a report containing QA/QC documentation, analytical results, and calculations necessary to demonstrate that the effluent specific MDL was correctly calculated. An effluent specific minimum quantification level (MQL) shall be determined in accordance with the following calculation:

$$\text{MQL} = 3.3 \times \text{MDL}$$

Upon written approval by the EPA Region 6 NPDES Permits Branch (6WQ-P), the effluent specific MQL may be utilized by the permittee for all future Discharge Monitoring Report (DMR) calculations and reporting requirements.

B. 24-HOUR ORAL REPORTING; DAILY MAXIMUM LIMITATION VIOLATIONS

Under the provisions of Part III.D.7.b.(3) of this permit, violations of daily maximum limitations for the following pollutants shall be reported orally to EPA Region 6, Compliance and Assurance Division, Water Enforcement Branch (6EN-W), Dallas, Texas, within 24 hours from the time the permittee becomes aware of the violation followed by a written report in five days.

Gross Alpha, Cadmium, Selenium, and Vanadium

C. COMPOSITE SAMPLING (24-HOUR)1. STANDARD PROVISIONS

Unless otherwise specified in this permit, the term "24-hour composite sample" means a sample consisting of a minimum of three (3) aliquots of effluent collected at regular intervals over a normal 24-hour operating period and combined in proportion to flow or a sample continuously collected in proportion to flow over a normal 24-hour operating period.

D. PERMIT REOPENER CLAUSE

Should the State adopt a new State water quality standard, this permit may be reopened for modification or revocation and re-issuance to established effluent limitations for the parameter(s) to be consistent with that approved State standard in accordance with 40CFR 122.44(d). Modification or revocation and reissuance of the permit shall follow regulations listed at 40CFR 124.5.

**PART III - STANDARD CONDITIONS FOR NPDES PERMITS****A. GENERAL CONDITIONS****1. INTRODUCTION**

In accordance with the provisions of 40 CFR Part 122.41, et. seq., this permit incorporates by reference ALL conditions and requirements applicable to NPDES Permits set forth in the Clean Water Act, as amended, (hereinafter known as the "Act") as well as ALL applicable regulations.

**2. DUTY TO COMPLY**

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

**3. TOXIC POLLUTANTS**

a. Notwithstanding Part III.A.5, if any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under Section 307(a) of the Act for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition.

b. The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants within the time provided in the regulations that established those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

**4. DUTY TO REAPPLY**

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. The application shall be submitted at least 180 days before the expiration date of this permit. The Director may grant permission to submit an application less than 180 days in advance but no later than the permit expiration date. Continuation of expiring permits shall be governed by regulations promulgated at 40 CFR Part 122.6 and any subsequent amendments.

**5. PERMIT FLEXIBILITY**

This permit may be modified, revoked and reissued, or terminated for cause in accordance with 40 CFR 122.62-64. The filing of a request for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

**6. PROPERTY RIGHTS**

This permit does not convey any property rights of any sort, or any exclusive privilege.

**7. DUTY TO PROVIDE INFORMATION**

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

**8. CRIMINAL AND CIVIL LIABILITY**

Except as provided in permit conditions on "Bypassing" and "Upsets", nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance. Any false or materially misleading representation or concealment of information required to be reported by the provisions of the permit, the Act, or applicable regulations, which avoids or effectively defeats the regulatory purpose of the Permit may subject the Permittee to criminal enforcement pursuant to 18 U.S.C. Section 1001.

**9. OIL AND HAZARDOUS SUBSTANCE LIABILITY**

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.

**10. STATE LAWS**

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by Section 510 of the Act.

**11. SEVERABILITY**

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

**B. PROPER OPERATION AND MAINTENANCE****1. NEED TO HALT OR REDUCE NOT A DEFENSE**

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. The permittee is responsible for maintaining adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failure either by means of alternate power sources, standby generators or retention of inadequately treated effluent.

**2. DUTY TO MITIGATE**

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

**3. PROPER OPERATION AND MAINTENANCE**

a. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by permittee as efficiently as possible and in a manner which will minimize upsets and discharges of excessive pollutants and will achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

b. The permittee shall provide an adequate operating staff which is duly qualified to carry out operation, maintenance and testing functions required to insure compliance with the conditions of this permit.

**4. BYPASS OF TREATMENT FACILITIES****a. BYPASS NOT EXCEEDING LIMITATIONS**

The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts III.B.4.b. and 4.c.

**b. NOTICE****(1) ANTICIPATED BYPASS**

If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

**(2) UNANTICIPATED BYPASS**

The permittee shall, within 24 hours, submit notice of an unanticipated bypass as required in Part III.D.7.

**c. PROHIBITION OF BYPASS**

(1) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and,

(c) The permittee submitted notices as required by Part III.B.4.b.

(2) The Director may allow an anticipated bypass after considering its adverse effects, if the Director determines that it will meet the three conditions listed at Part III.B.4.c(1).

**5. UPSET CONDITIONS****a. EFFECT OF AN UPSET**

An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Part III.B.5.b. are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

**b. CONDITIONS NECESSARY FOR A DEMONSTRATION OF UPSET**

A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and that the permittee can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) The permittee submitted notice of the upset as required by Part III.D.7; and,

(4) The permittee complied with any remedial measures required by Part III.B.2.

**c. BURDEN OF PROOF**

In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

**6. REMOVED SUBSTANCES**

Unless otherwise authorized, solids, sewage sludges, filter backwash, or other pollutants removed in the course of treatment or wastewater control shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters.

**7. PERCENT REMOVAL (PUBLICLY OWNED TREATMENT WORKS)**

For publicly owned treatment works, the 30-day average (or Monthly Average) percent removal for Biochemical Oxygen Demand and Total Suspended Solids shall not be less than 85 percent unless otherwise authorized by the permitting authority in accordance with 40 CFR 133.103.

**C. MONITORING AND RECORDS****1. INSPECTION AND ENTRY**

The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by the law to:

- a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
  - b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
  - c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this permit; and
  - d. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.
2. REPRESENTATIVE SAMPLING  
Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
  3. RETENTION OF RECORDS  
The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report, or application. This period may be extended by request of the Director at any time.
  4. RECORD CONTENTS  
Records of monitoring information shall include:
    - a. The date, exact place, and time of sampling or measurements;
    - b. The individual(s) who performed the sampling or measurements;
    - c. The date(s) and time(s) analyses were performed;
    - d. The individual(s) who performed the analyses;
    - e. The analytical techniques or methods used; and
    - f. The results of such analyses.
  5. MONITORING PROCEDURES
    - a. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit or approved by the Regional Administrator.
    - b. The permittee shall calibrate and perform maintenance procedures on all monitoring and analytical instruments at intervals frequent enough to insure accuracy of measurements and shall maintain appropriate records of such activities.
    - c. An adequate analytical quality control program, including the analyses of sufficient standards, spikes, and duplicate samples to insure the accuracy of all required analytical results shall be maintained by the permittee or designated commercial laboratory.

6. FLOW MEASUREMENTS

Appropriate flow measurement devices and methods consistent with accepted scientific practices shall be selected and used to ensure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated, and maintained to insure that the accuracy of the measurements is consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of less than 10% from true discharge rates throughout the range of expected discharge volumes.

- D. REPORTING REQUIREMENTS

1. PLANNED CHANGES

- a. INDUSTRIAL PERMITS

The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

- (1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR Part 122.29(b); or,
- (2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements listed at Part III.D.10.a.

- b. MUNICIPAL PERMITS

Any change in the facility discharge (including the introduction of any new source or significant discharge or significant changes in the quantity or quality of existing discharges of pollutants) must be reported to the permitting authority. In no case are any new connections, increased flows, or significant changes in influent quality permitted that will cause violation of the effluent limitations specified herein.

2. ANTICIPATED NONCOMPLIANCE

The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

3. TRANSFERS

This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Act.

4. DISCHARGE MONITORING REPORTS AND OTHER REPORTS

Monitoring results must be reported on Discharge Monitoring Report (DMR) Form EPA No. 3320-1 in accordance with the "General Instructions" provided on the form. The permittee shall submit the original DMR signed and certified as required by Part III.D.11 and all other reports required by Part III.D. to the EPA at the address below. Duplicate copies of DMR's and



all other reports shall be submitted to the appropriate State agency(ies) at the following address(es):

EPA:

Compliance Assurance and Enforcement Division  
Water Enforcement Branch (6EN-W)  
U.S. Environmental Protection Agency, Region 6  
1445 Ross Avenue  
Dallas, TX 75202-2733

New Mexico:

Program Manager  
Surface Water Quality Bureau  
New Mexico Environment Department  
P.O. Box 26110  
1190 Saint Francis Drive  
Santa Fe, NM 87502

5. ADDITIONAL MONITORING BY THE PERMITTEE

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR Part 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report (DMR). Such increased monitoring frequency shall also be indicated on the DMR.

6. AVERAGING OF MEASUREMENTS

Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.

7. TWENTY-FOUR HOUR REPORTING

a. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall be provided within 5 days of the time the permittee becomes aware of the circumstances. The report shall contain the following information:

- (1) A description of the noncompliance and its cause;
- (2) The period of noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and,
- (3) Steps being taken to reduce, eliminate, and prevent recurrence of the noncomplying discharge.

b. The following shall be included as information which must be reported within 24 hours:

(1) Any unanticipated bypass which exceeds any effluent limitation in the permit;

(2) Any upset which exceeds any effluent limitation in the permit; and,

(3) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in Part II (industrial permits only) of the permit to be reported within 24 hours.

c. The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

8. OTHER NONCOMPLIANCE

The permittee shall report all instances of noncompliance not reported under Parts III.D.4 and D.7 and Part I.B (for industrial permits only) at the time monitoring reports are submitted. The reports shall contain the information listed at Part III.D.7.

9. OTHER INFORMATION

Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

10. CHANGES IN DISCHARGES OF TOXIC SUBSTANCES

All existing manufacturing, commercial, mining, and silvacultural permittees shall notify the Director as soon as it knows or has reason to believe:

a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant listed at 40 CFR Part 122, Appendix D, Tables II and III (excluding Total Phenols) which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

- (1) One hundred micrograms per liter (100 µg/L);
- (2) Two hundred micrograms per liter (200 µg/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/L) for 2,4-dinitro-phenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;
- (3) Five (5) times the maximum concentration value reported for that pollutant in the permit application; or
- (4) The level established by the Director.

- b. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

- (1) Five hundred micrograms per liter (500 µg/L);
- (2) One milligram per liter (1 mg/L) for antimony;
- (3) Ten (10) times the maximum concentration value reported for that pollutant in the permit application; or
- (4) The level established by the Director.

#### 11. SIGNATORY REQUIREMENTS

All applications, reports, or information submitted to the Director shall be signed and certified.

- a. ALL PERMIT APPLICATIONS shall be signed as follows:

- (1) FOR A CORPORATION - by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

- (a) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation; or,
- (b) The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

- (2) FOR A PARTNERSHIP OR SOLE PROPRIETORSHIP - by a general partner or the proprietor, respectively.

- (3) FOR A MUNICIPALITY, STATE, FEDERAL, OR OTHER PUBLIC AGENCY - by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes:

- (a) The chief executive officer of the agency, or
- (b) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

- b. ALL REPORTS required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- (1) The authorization is made in writing by a person described above;
- (2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or an individual occupying a named position; and,
- (3) The written authorization is submitted to the Director.

#### c. CERTIFICATION

Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

#### 12. AVAILABILITY OF REPORTS

Except for applications, effluent data, permits, and other data specified in 40 CFR 122.7, any information submitted pursuant to this permit may be claimed as confidential by the submitter. If no claim is made at the time of submission, information may be made available to the public without further notice.

**E. PENALTIES FOR VIOLATIONS OF PERMIT CONDITIONS****1. CRIMINAL****a. NEGLIGENT VIOLATIONS**

The Act provides that any person who negligently violates permit conditions implementing Section 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

**b. KNOWING VIOLATIONS**

The Act provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

**c. KNOWING ENDANGERMENT**

The Act provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 303, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than \$250,000, or by imprisonment for not more than 15 years, or both.

**d. FALSE STATEMENTS**

The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or by both. (See Section 309.c.4 of the Clean Water Act)

**2. CIVIL PENALTIES**

The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed \$27,500 per day for each violation.

**3. ADMINISTRATIVE PENALTIES**

The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:

**a. CLASS I PENALTY**

Not to exceed \$11,000 per violation nor shall the maximum amount exceed \$27,500.

**b. CLASS II PENALTY**

Not to exceed \$11,000 per day for each day during which the violation continues nor shall the maximum amount exceed \$137,500.

**F. DEFINITIONS**

All definitions contained in Section 502 of the Act shall apply to this permit and are incorporated herein by reference. Unless otherwise specified in this permit, additional definitions of words or phrases used in this permit are as follows:

1. ACT means the Clean Water Act (33 U.S.C. 1251 et. seq.), as amended.
2. ADMINISTRATOR means the Administrator of the U.S. Environmental Protection Agency.
3. APPLICABLE EFFLUENT STANDARDS AND LIMITATIONS means all state and Federal effluent standards and limitations to which a discharge is subject under the Act, including, but not limited to, effluent limitations, standards or performance, toxic effluent standards and prohibitions, and pretreatment standards.
4. APPLICABLE WATER QUALITY STANDARDS means all water quality standards to which a discharge is subject under the Act.
5. BYPASS means the intentional diversion of waste streams from any portion of a treatment facility.
6. DAILY DISCHARGE means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in terms of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the sampling day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the sampling day. "Daily discharge" determination of concentration made using a composite sample shall be the concentration of the composite sample. When grab samples are used, the "daily discharge" determination of concentration shall be arithmetic average (weighted by flow value) of all samples collected during that sampling day.
7. DAILY MAXIMUM discharge limitation means the highest allowable "daily discharge" during the calendar month.
8. DIRECTOR means the U.S. Environmental Protection Agency Regional Administrator or an authorized representative.
9. ENVIRONMENTAL PROTECTION AGENCY means the U.S. Environmental Protection Agency.
10. GRAB SAMPLE means an individual sample collected in less than 15 minutes.
11. INDUSTRIAL USER means a nondomestic discharger, as identified in 40 CFR 403, introducing pollutants to a publicly owned treatment works.

12. MONTHLY AVERAGE (also known as DAILY AVERAGE) discharge limitations means the highest allowable average of "daily discharge(s)" over a calendar month, calculated as the sum of all "daily discharge(s)" measured during a calendar month divided by the number of "daily discharge(s)" measured during that month. When the permit establishes daily average concentration effluent limitations or conditions, the daily average concentration means the arithmetic average (weighted by flow) of all "daily discharge(s)" of concentration determined during the calendar month where C = daily concentration, F = daily flow, and n = number of daily samples; daily average discharge =

$$\frac{C_1F_1 + C_2F_2 + \dots + C_nF_n}{F_1 + F_2 + \dots + F_n}$$

13. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under Sections 307, 318, 402, and 405 of the Act.
14. SEVERE PROPERTY DAMAGE means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
15. SEWAGE SLUDGE means the solids, residues, and precipitates separated from or created in sewage by the unit processes of a publicly owned treatment works. Sewage as used in this definition means any wastes, including wastes from humans, households, commercial establishments, industries, and storm water runoff, that are discharged to or otherwise enter a publicly owned treatment works.
16. TREATMENT WORKS means any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage and industrial wastes of a liquid nature to implement Section 201 of the Act, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, sewage collection systems, pumping, power and other equipment, and their appurtenances, extension, improvement, remodeling, additions, and alterations thereof.
17. UPSET means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

18. FOR FECAL COLIFORM BACTERIA, a sample consists of one effluent grab portion collected during a 24-hour period at peak loads.

19. The term "MGD" shall mean million gallons per day.

20. The term "mg/L" shall mean milligrams per liter or parts per million (ppm).

21. The term "µg/L" shall mean micrograms per liter or parts per billion (ppb).

22. MUNICIPAL TERMS

- a. 7-DAY AVERAGE or WEEKLY AVERAGE, other than for fecal coliform bacteria, is the arithmetic mean of the daily values for all effluent samples collected during a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week. The 7-day average for fecal coliform bacteria is the geometric mean of the values for all effluent samples collected during a calendar week.
- b. 30-DAY AVERAGE or MONTHLY AVERAGE, other than for fecal coliform bacteria, is the arithmetic mean of the daily values for all effluent samples collected during a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month. The 30-day average for fecal coliform bacteria is the geometric mean of the values for all effluent samples collected during a calendar month.
- c. 24-HOUR COMPOSITE SAMPLE consists of a minimum of 12 effluent portions collected at equal time intervals over the 24-hour period and combined proportional to flow or a sample collected at frequent intervals proportional to flow over the 24-hour period.
- d. 12-HOUR COMPOSITE SAMPLE consists of 12 effluent portions collected no closer together than one hour and composited according to flow. The daily sampling intervals shall include the highest flow periods.
- e. 6-HOUR COMPOSITE SAMPLE consists of six effluent portions collected no closer together than one hour (with the first portion collected no earlier than 10:00 a.m.) and composited according to flow.
- f. 3-HOUR COMPOSITE SAMPLE consists of three effluent portions collected no closer together than one hour (with the first portion collected no earlier than 10:00 a.m.) and composited according to flow.